

(d) *Information*. Any fact or concept, regardless of the physical form or characteristics of the medium on or in which it is recorded, contained, or revealed.

(e) *Intelligence Community*. An element or agency of the U.S. Government identified in or designated pursuant section 3.5(h) of Executive Order 12333, as amended.

(f) *Reviewing official*. An individual appointed by the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs who may make a determination that a document or material contains, does not contain, or no longer contains DoD UCNI.

(g) *Safeguards*. An integrated system of physical protection, document and material accounting, and control measures designed to deter, prevent, detect, and respond to unauthorized possession, use, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody.

(h) *SNM*. Defined in 42 U.S.C. 2014.

(i) *SNM equipment*. Equipment, systems, or components whose failure or destruction would cause an impact on safeguarding DoD SNM resulting in an unacceptable interruption to a national security program or an unacceptable impact on the health and safety of the public.

(j) *SNM facility*. A DoD facility that performs a function in support of Atomic Energy Defense Programs whose disruption could reasonably be expected to have a significant adverse effect on safeguarding DoD SNM, the health and safety of the public or the common defense and security.

(k) *Unauthorized dissemination*. The intentional or negligent transfer, in any manner and by any person, of information contained in a document or material determined by a reviewing official to contain DoD UCNI, and so marked in accordance with the procedures in § 223.6 of this part, to any person or entity other than an individual or entity authorized access to DoD UCNI in accordance with 10 U.S.C. 128 and this part.

#### § 223.4 Policy.

It is DoD policy that:

(a) Unauthorized dissemination of unclassified information pertaining to

security measures, including security plans, procedures, and equipment, for the physical protection of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody is prohibited.

(b) Unclassified information shall be protected as DoD UCNI based on a determination that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody.

(c) Unclassified information regarding physical protection of DoD SNM and nuclear weapons in DoD custody shall be made publicly available to the fullest extent possible by applying the minimum restrictions, consistent with the requirements of 10 U.S.C. 128, necessary to protect the health and safety of the public or the common defense and security.

(d) This part and title 10 of the Code of Federal Regulations (CFR) part 1017 shall be used as guidance for handling DOE UCNI that is under DoD control.

(e) This part does not prevent a determination that information previously determined to be DoD UCNI is classified information in accordance with Volume 1 of DoD Manual 5200.01<sup>3</sup> and other applicable standards of classification.

#### § 223.5 Responsibilities.

(a) The Under Secretary of Defense for Intelligence (USD(I)) shall oversee the DoD program for controlling DoD UCNI and coordinate DoD compliance with the DOE program for controlling DOE UCNI.

(b) The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs (ASD(NCB)), under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall:

<sup>3</sup>Available on the Internet at [http://www.dtic.mil/whs/directives/corresp/pdf/520001\\_vol1.pdf](http://www.dtic.mil/whs/directives/corresp/pdf/520001_vol1.pdf).

## § 223.6

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(1) Identify information regarding nuclear weapons security and the protection of SNM at DoD nuclear reactor facilities as DoD UCNI and protect it from unauthorized dissemination, consistent with the requirements of 10 U.S.C. 128 and this part.

(2) Advise the USD(I) on implementation of the DoD UCNI program.

(3) Designate a DoD UCNI reviewing official, who shall be authorized to determine that materials or documents contain, do not contain, or no longer contain DoD UCNI.

(c) The Director, Administration and Management shall provide guidance, as needed, to the Heads of the DoD Components regarding 5 U.S.C. 552, as implemented by 32 CFR part 286, as it applies to the DoD UCNI program.

(d) The Heads of the DoD Components shall identify DoD UCNI within their Component and protect it from unauthorized dissemination, consistent with the requirements of 10 U.S.C. 128 and this part.

### § 223.6 Procedures-identifying and controlling DoD UCNI.

(a) *General.* (1) The decision to protect unclassified information as DoD UCNI shall be based on a determination that the unauthorized dissemination of such information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by increasing significantly the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody. This is called the “adverse effects test.”

(2) DoD UCNI shall be identified, controlled, marked, transmitted, and safeguarded in the DoD Components, the Intelligence Community, and the North Atlantic Treaty Organization (NATO), and among DoD contractors, consultants, and grantees. Within NATO, DoD UCNI shall be marked, controlled, and safeguarded as “NATO RESTRICTED” information.

(3) Contracts requiring access to or the preparation of unclassified information that is or could be DoD UCNI shall require compliance with this part and any applicable DoD Component

regulations, and shall specify requirements for identifying, marking, handling, and safeguarding DoD UCNI.

(b) *Identifying DoD UCNI.* (1) To be designated and protected as DoD UCNI, information must:

(i) Be unclassified.

(ii) Pertain to security measures, including plans, procedures, and equipment, for the physical protection of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody.

(iii) Meet the adverse effects test.

(2) Information shall be protected as DoD UCNI if it qualifies for one or more of the categories listed in § 223.7(c) and meets the criteria in paragraph (b)(1) of this section.

(3) DoD personnel, in making a determination to protect unclassified information as DoD UCNI, shall consider the probability of illegal production of nuclear weapons or of theft, diversion, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody if the information proposed for protection were made available for public disclosure and dissemination. The cognizant official shall consider how the unauthorized disclosure or dissemination of such information could assist a potential adversary in:

(i) Selecting a target for an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD SNM, SNM equipment, or SNM facilities (e.g., relative importance of a facility or the location, form, and quantity of DoD SNM). Information that can be obtained by observation from public areas outside controlled locations should not be considered as DoD UCNI.

(ii) Planning or committing an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD SNM, SNM equipment, or SNM facilities (e.g., design of security systems; building plans; methods and procedures for transfer, accountability, and handling of nuclear weapons or DoD SNM; or security plans, procedures, and capabilities).

(iii) Measuring the success of an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD